

Translation

PATENT COOPERATION TREATY

PCT/EP2003/004031



PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 29801P WO	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP2003/004031	International filing date (day/month/year) 17 April 2003 (17.04.2003)	Priority date (day/month/year) 19 April 2002 (19.04.2002)
International Patent Classification (IPC) or national classification and IPC A23J 7/00		
Applicant BIOGHURT BIOGARDE GmbH & Co. KG		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of <u>5</u> sheets, including this cover sheet.  <input checked="" type="checkbox"/> This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).  These annexes consist of a total of <u>3</u> sheets.
3. This report contains indications relating to the following items:  I <input checked="" type="checkbox"/> Basis of the report II <input type="checkbox"/> Priority III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability IV <input type="checkbox"/> Lack of unity of invention V <input checked="" type="checkbox"/> Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement VI <input type="checkbox"/> Certain documents cited VII <input type="checkbox"/> Certain defects in the international application VIII <input type="checkbox"/> Certain observations on the international application

Date of submission of the demand 27 August 2003 (27.08.2003)	Date of completion of this report 25 August 2004 (25.08.2004)
Name and mailing address of the IPEA/EP  Facsimile No.	Authorized officer  Telephone No.

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP2003/004031

**I. Basis of the report****1. With regard to the elements of the international application:\***

- ☐ the international application as originally filed
- ☒ the description:  
pages \_\_\_\_\_ 1-13 \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☒ the claims:  
pages \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, as amended (together with any statement under Article 19  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_ 1-14 \_\_\_\_\_, filed with the letter of \_\_\_\_\_ 13 July 2004 (13.07.2004)
- ☐ the drawings:  
pages \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☐ the sequence listing part of the description:  
pages \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

**2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.**  
These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

**3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:**

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

**4. ☐ The amendments have resulted in the cancellation of:**

- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, Nos. \_\_\_\_\_
- ☐ the drawings, sheets/fig \_\_\_\_\_

**5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\***

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP 03/04031

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. Statement**

Novelty (N)	Claims	14	YES
	Claims	1-13	NO
Inventive step (IS)	Claims		YES
	Claims	1-14	NO
Industrial applicability (IA)	Claims	1-14	YES
	Claims		NO

**2. Citations and explanations****1. Cited documents:**

This report makes reference to the following documents:

D1: WO-A-0162226

D2: EP-A-0185442

D3: WO-A-0184961

**2. Novelty (PCT Article 33(2))**

The concept of "therapeutic application" relates to the treatment of a particular illness with a specific chemical substance or preparation in a particular human or animal organism that requires such treatment. In the absence of an indication of at least (i) the illness or (ii) the nature of the active substance or preparation, a simple method feature is not enough to define a particular method for the therapeutic application.

The subject matter of claim 1 therefore relates to nothing more than the matrix *per se*.

D1 (see example 2 on page 19) relates to a granular material with a homogeneous solid matrix containing: a/ ≥

10% w/w soy protein as a vegetable protein, b/ lecithin and c/ aloe vera as an active substance and d/ microcrystalline cellulose. The subject matter of claims 1 to 13 is therefore not novel (PCT Article 33(2)).

D2 (see example 1 in columns 15 and 16) discloses a matrix in granular form containing: a/ hydrogenated palm oil as a carrier material, b/ monoglyceride, c/ 95% acetone-insoluble lecithin (8.3% w/w), and d/ aspartame. The final matrix has an overall diameter between 160 and 30 U.S. standard mesh (= 90-590 microns). The subject matter of claims 1 to 4, 7, 9 and 10 to 13 is therefore not novel (PCT Article 33(2)).

### 3. Inventive step (PCT Article 33(3))

Since the subject matter of claims 1 to 13 is not novel, it also does not involve inventive step (PCT Article 33(3)).

D1 is regarded as the prior art closest to the subject matter of claim 14.

D1 (see example 2 on page 19) discloses a granular material with a homogeneous solid matrix containing a/  $\geq$  10% w/w soy protein as a vegetable protein, b/ lecithin, c/ aloe vera and d/ microcrystalline cellulose.

The subject matter of independent claim 1 differs from D1 in that the phospholipid components are used as bioactive components of a matrix for preventing raised serum cholesterol levels and symptoms of diabetes, and for enhancing mental health, physical endurance and performance.

Claim 14 is therefore novel within the meaning of PCT Article 33(2).

The invention according to claim 1 merely consists in a new application of the granular material known from D1. In this new application, however, only those properties of this granular material are used which are already known from D3 (see page 7, lines 10-24).

The subject matter of claim 14 therefore does not involve inventive step (PCT Article 33(3)).

**4. Industrial applicability (PCT Article 33(4))**

The subject matter of claims 1 to 14 meets the requirements of PCT Article 33(4) with regard to industrial applicability.